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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 556/2013

Decision adopted by the Committee at its fifty-fourth session (20 April–15 May 2015)

Submitted by:	Z. (represented by counsel, Johan Lagerfeld)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	11 July 2013 (initial submission)
Date of present decision:	8 May 2015
Subject matter:	Deportation to the Russian Federation
Procedural issues:	None
Substantive issue:	Risk of torture upon return to the country of origin
Article of the Convention:	Article 3

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fourth session)

concerning

Communication No. 556/2013*

Submitted by:	Z. (represented by counsel, Johan Lagerfeld)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	11 July 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 May 2015,

Having concluded its consideration of complaint No. 556/2013, submitted to it by Z. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant is Z., a Russian national born in 1979. His request for asylum in Sweden was rejected and, at the time of submission of the complaint, he was awaiting forcible removal to the Russian Federation. He claims that his deportation would violate his rights under article 3 of the Convention. The complainant is represented by counsel, Johan Lagerfeld.

1.2 On 30 July 2013, acting under rule 114, paragraph 1, of its rules of procedure, the Committee requested the State party to refrain from expelling the complainant to the Russian Federation while his complaint was under consideration by the Committee.

The facts as presented by the complainant

2.1 The complainant submits that he and his brother are ethnic Chechens who resided in Chechnya, in the Russian Federation. On 15 June 2010, the complainant's brother was apprehended near the village of Sernovodsk in Chechnya by armed men wearing masks. While in detention, the brother was beaten up and tortured. He was, for instance, subjected to electric shocks to his genitals and was held incommunicado and, after a trial, was

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Felice Gaer, Abdoulaye Gaye, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

sentenced to six months of imprisonment and another year on probation. On 16 December 2010, he was released and shortly thereafter, he "went up into the mountains".[1]

2.2 On 5 August 2011, the complainant was apprehended by law enforcement agents, taken to a nearby forest and beaten until he lost consciousness. Then, he was taken to a building and subjected to electric shocks.[2] The authorities wanted to know his brother's whereabouts. The complainant was subsequently released, and went to his uncle's home, where he stayed for one week in the interests of safety. He received medical assistance at a nearby hospital, but was told by the medical staff that they could not register the authorities as the perpetrators of his injuries, since that would be dangerous for them. On returning to his house, he noticed that he was being followed.[3] On 17 October 2011, his house was raided by policemen wearing masks. He was not arrested because he was not in the house when the raid happened. However, the masked policemen took his parents' identity documents and gave them 15 minutes to pack. After that, his house was set on fire and destroyed.

2.3 On 19 October 2011, he was taken by his uncle to Belarus and from there to Lithuania. On 24 October 2011, he arrived in Sweden and on the same date applied for asylum there.

2.4 On 31 May 2012, the Migration Board denied his asylum request. According to the summary in English provided by the complainant, the Board held that it was unclear how the complainant knew that his brother was a rebel. In addition, the Board stated that the complainant's statements contained some unclear points, for instance, whether he had a registered address in Chechnya or Ingushetia and whether he had been arrested six or eight months after his brother's disappearance, and that he had provided conflicting accounts concerning who took his passport. The Board also indicated that it was strange that the officials had burned down the family house, since the complainant's parents were not suspected of any crime. Furthermore, the Board found that, as the complainant had not personally assisted the rebels, it was implausible that the authorities would be interested in him. The complainant appealed this decision before the Migration Court.

2.5 On 12 December 2012, the Migration Court denied the complainant's request for oral proceedings at the Court and his request for the invoked documents to be translated.[4] On 12 March 2013, the Court denied the request to translate the invoked documents and rejected the complainant's appeal against the Migration Board's decision of 31 May 2012. The Court stated that the fact that the complainant was released by the police the same day he was arrested suggested that he was not of particular interest to the authorities in Chechnya. Further, his parents' house was raided despite him not being there. Thus, the Court found that he did not provide sufficient evidence to support his claim that he was in

[1] The complaint does not provide further information nor does it enclose documentation in this regard.

[2] On 12 July 2013, the complainant provided a further submission in which he stated that he had been arrested and mistreated on a previous occasion. Nevertheless, the submission does not provide any additional details or information in that regard.

[3] The complaint does not provide further information or contain documentation relating to these claims/events.

[4] The complaint does not provide further details or information in this regard. It does not explain the circumstances in which the complainant requested that the documents be translated or why he made that request.

need of international protection.[5] The complainant filed an application for leave to appeal before the Migration Court of Appeals.[6]

2.6 On 23 April 2013, the Migration Court of Appeals rejected the complainant's application for leave to appeal. The Migration Court decision of 12 March 2013 became final. The complainant was summoned to a meeting with the Migration Board on 2 July 2013 to discuss his return to the Russian Federation. However, no date has yet been set. The complainant argues that he has exhausted all domestic remedies.

The complaint

3.1 The complainant claims that the Swedish authorities did not adequately assess the risk that he would be subjected to torture or ill-treatment if returned to the Russian Federation, which would violate article 3 of the Convention. They failed to assess his personal situation, taking into account the persecution to which he had previously been subjected and his brother's participation in a rebel group.

3.2 He argues that, since he has already been subjected to torture in the past, there are substantial grounds to assume that there is a real, personal risk of this treatment being repeated.[7] The Migration Board focused on some inconsistences in his account, despite the fact that they were minor discrepancies. Moreover, these discrepancies could be explained by the fact that, while he is a native speaker of Chechen and fully fluent in that language, on a couple of occasions he was forced to use Russian as the language of the interview, a language with which he is familiar, but not to the same extent as with his native language.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 28 January 2014, the State party submitted its observations on admissibility and the merits. It recalls the facts of the case and provides excerpts from relevant domestic legislation. The State party submits that the complainant's case was assessed under the 2005 Aliens Act, which entered into force on 31 March 2006. The State party's authorities, upon examination of the facts of the case, concluded that the complainant had not shown that he was in need of protection.

4.2 The State party submits that, on 31 May 2012, the Migration Board rejected his asylum application and decided to expel him to the Russian Federation. That decision was appealed to the Migration Court, which, on 12 March 2013, rejected the appeal. On 23 April 2013, the Migration Court of Appeals refused to grant leave to appeal and the decision to expel the complainant became final. On 13 May 2013, the complainant claimed before the Board that there were some impediments to the enforcement of this decision, and

[5] The complaint does not provide further information or details as to the reasoning of the decision of the Migration Court.

[6] The complaint does not provide further information or details as to the reasoning of the decision of the Migration Court of Appeals.

[7] The complainant refers to interim guidance provided by the Regional Office for the Baltic and Nordic Countries of the Office of the United Nations High Commissioner for Refugees (UNHCR) to the complainant's counsel on assessing the international protection needs of asylum seekers from Chechnya in the Russian Federation, dated 4 February 2011. The document recalls that, in February 2003, UNHCR assessed that all Chechen asylum seekers from Chechnya were in need of international protection. Since then, the situation has evolved positively, after the decrease in the level and scope of military activity, an overall improvement in the security situation and a gradual withdrawal of federal troops from Chechnya. Nevertheless, there are still continuing reports of human rights concerns that may place personal safety or rights at risk, in particular, for members of illegal armed groups and their relatives, political opponents of the federal or Chechen authorities, human rights activists and persons that held official positions in the administration of former President Aslan Maskhadov.

requested that the Board re-examine his case. The Board rejected the request on 24 October 2013.

4.3 The State party submits that the claim is based on alleged threats, assault and torture during an arrest by the Chechen authorities, but that such claims are manifestly unfounded and, therefore, inadmissible under article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure.

4.4 Regarding the merits of the communication, the State party submits that the Committee must decide whether a complainant is personally at risk of being subjected to torture in the country to which he or she is being returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not, as such, constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture upon return to his or her country. The State party, referring to the Committee's jurisprudence,[8] submits that additional grounds must exist to show personal risk.

4.5 In considering the present case, the State party therefore examined the general human rights situation in the Russian Federation and, in particular, the complainant's personal risk of being subjected to torture if returned there. The State party notes that it is up to the complainant, who must present an arguable case, to establish that he runs a foreseeable, real and personal risk of being subjected to torture.[9] In addition, the risk of torture must be assessed on grounds that go beyond mere theory, but does not have to meet the test of being highly probable.

4.6 Regarding the current human rights situation in the Russian Federation and, specifically, in the northern Caucasus, recent reports show that the general level of violence has decreased in recent years.[10] The State party does not underestimate concerns regarding the human rights situation, since recent reports still contain information on human rights violations committed against the civilian population in the form of arbitrary detentions, abductions, torture and extrajudicial killings.

4.7 The State party submits that several provisions of the Swedish Aliens Act reflect the principles enshrined in article 3 of the Convention and, therefore, when considering asylum applications, its authorities apply the same kind of test as the Committee in order to assess the risk of torture. According to chapter 12, sections 1 to 3, of the Aliens Act, asylum seekers cannot be returned to a country where there are reasonable grounds to assume that they would be in danger of being subjected to the death penalty, corporal punishment, torture or other degrading treatment or punishment.

4.8 The State party also submits that the national authorities are in a very good position to assess the information submitted by asylum seekers and the credibility of claims. In the present case, the Migration Board and the Migration Court have made a thorough examination of the material before them. With regard to the initial asylum claim, the

[8] The State party refers to communications No. 150/1999, *S.L. v. Sweden*, decision adopted on 11 May 2001, para. 6.3, and No. 213/2002, *E.J.V.M. v. Sweden*, decision adopted on 14 November 2003, para. 8.3.

[9] The State party refers to, inter alia, communication No. 178/2001, *H.O. v. Sweden*, decision adopted on 13 November 2001, para. 13.

[10] References are made to the following reports: Department of State of the United States of America, "Country Reports on Human Rights Practices for 2012: Russia"; Amnesty International, "Amnesty International Annual Report 2012 – Russian Federation"; Human Rights Watch, "World Report 2012: Russia"; Swedish Migration Board country profile on the Russian Federation of 25 February 2011; report of the Ministry of Foreign Affairs of Sweden of 2011; report of the Norwegian Country of Origin Information Centre of 2013; and report of the Danish Refugee Council.

Migration Board conducted an interview that lasted approximately 2 hours and 15 minutes. This was conducted in the presence of a counsel and an interpreter.[11] On one occasion, the Board was able to re-examine "new circumstances" invoked by the applicant (see para. 4.2).

4.9 The State party refers to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, and its jurisprudence, stating that considerable weight will be given to findings of fact that are made by organs of the State party concerned.[12] The State party asserts that the Swedish Migration Board and the Migration Court are specialized bodies with particular expertise in the field of asylum law and practice and that there is no reason, therefore, to conclude that the examination by the national authorities was inadequate, or that the outcome was arbitrary or amounted to denial of justice.

4.10 The State party submits that it was able to identify several inconsistencies in the facts presented by the complainant. During the initial interview on 23 November 2011, the complainant claimed that he was born in Grozny and that his most recent address was in the village of Sernovodsk, approximately 55 to 60 km from Grozny. However, the driver's licence submitted by the complainant, issued on 13 July 2010, shows his place of residence as Nazran, which is in Ingushetia. The complainant claimed that he was temporarily registered as resident in Nazran because it was cheaper to obtain a driver's licence there. According to the country information referenced in paragraph 4.6 above, all citizens can reside in any location for up to 90 days without temporary registration. It is implausible that it would take the complainant more than 90 days to obtain a driver's licence and, therefore, there is no acceptable explanation as to why the complainant would have temporarily registered his residence in Nazran.

4.11 The State party also submits that the complainant's copy of his domestic passport, issued on 16 December 2008, indicates his place of residence as Sernovodsk, Chechnya. The complainant testified that his original passport was in the possession of the district office of the Ministry of the Interior of the Russian Federation. The country information referenced in paragraph 4.6 indicates that domestic passports contain information about "deregistration" from a previous permanent place of residence. Since the driver's licence shows Nazran as the complainant's place of residence, the State party concludes that the complainant was not able to substantiate that his permanent residence was in Chechnya.

4.12 The State party claims that it is improbable that, during the search in his house on 17 October 2011, the complainant kept his driver's licence, but that the law enforcement officials confiscated his domestic passport. This is based on the fact that the domestic passport is the main identity document for Russian citizens that shows their place of residence. Furthermore, the complainant has not given a plausible explanation as to why his brother was arrested. The State party submits that it is unlikely that the Russian authorities would have arrested and convicted an innocent citizen for being a member of a rebel group.

4.13 The State party also claims that the information about the complainant's brother's arrest and conviction is implausible. According to the complainant, his brother was arrested and subsequently convicted for assisting rebels, in accordance with article 208 of the Russian Criminal Code. According to the information from the Norwegian Country of Origin Information Centre, aiding and abetting rebel groups is punishable under the Russian Criminal Code, article 208, paragraph 1 (organizing an illegal group), article 208,

[11] The State party submits that the complainant was represented by counsel throughout the asylum proceedings.

[12] The State party refers to communication No. 277/2005, *N.Z.S. v. Sweden*, decision adopted 22 November 2006, para. 8.6.

paragraph 2 (participation in an illegal group), and article 222 (illegal possession and sale of firearms).

4.14 The State party submits that, during his interview with the Migration Board, the complainant claimed that his brother was released from prison on 16 December 2010, after which time he joined rebel forces. The complainant himself was arrested on 5 August 2011, eight months after his brother's disappearance. However, on 27 October 2011, the complainant informed the Board that he was arrested six months after the disappearance of his brother. When questioned about his brother's whereabouts, the complainant could not clearly establish that his brother had indeed joined rebel forces. In addition, the fact that the search at the complainant's home was conducted while he was not there shows that the Russian authorities had no interest in the complainant personally.

4.15 Regarding the arrest warrant presented to the Migration Board on 13 May 2013, the State party submits that such documents are not normally communicated to the wanted individual, in this case, the complainant. The Board considered the document to be very simple and therefore of low probative value. The State party contends that the complainant has not provided any medical documentation showing that he was subjected to torture or ill-treatment. Apart from a scar on his eyebrow, the complainant stated that there were no visible scars or other injuries on his body from the torture he had allegedly suffered.

The complainant's comments on the State party's observations on admissibility and the merits

5.1 In reply to the State party's observations, on 14 April 2014, the complainant submitted that the human rights situation was significantly different from the State party's description. The complainant referred to the same report published by the Swedish Foreign Office that the State party referenced, which is available in Swedish only. According to that report, the Russian administration is characterized by widespread corruption, and human rights activists, journalists and whistle-blowers are harassed and subjected to sometimes fatal violence. The most serious violations still occur in the northern Caucasus, where, in the name of fighting terrorism, the civilian population is subjected to torture, arbitrary arrests and kidnappings.

5.2 The complainant also refers to unconfirmed reports of political murders and disappearances that are sanctioned by the authorities. This clearly demonstrates a consistent pattern of gross, flagrant or mass violations of human rights. Several organizations have stated that, in Chechnya, there is an atmosphere of terror and a climate of pervading fear. The United Nations High Commissioner for Human Rights has called for accountability for murders, intimidation and harassment.

5.3 The complainant submits that, while the Migration Board and the Migration Court are in a good position to assess the information submitted by asylum applicants, they do not have first-hand knowledge of the situation in the countries of origin, which is especially evident in the present case. The complainant also submits that his follow-up interview on 23 November 2011 was conducted in Russian, which is a foreign language for him. Minor inconsistencies in testimonies should not be considered as damaging to the veracity or credibility of the whole story.

5.4 The complainant further submits that the State party should have referred him to an expert in forensic medicine to verify injuries that were inflicted when the complainant was tortured. Furthermore, the criminal law and criminal procedure law in the Russian Federation, specifically in Chechnya, cannot be described as adhering to the principles of justice and the rule of law. The complainant submits that he cannot seek protection in Chechnya, or any other part of the Russian Federation, bearing in mind that the

complainant and his brother were arrested and tortured, and that their parents' house was burned down, a clear sign of foreseeable, real and personal risk.

State party's further observations

6. In a note verbale dated 9 June 2014, the State party submitted additional observations. It reiterates its previous observations on the human rights situation in Chechnya, and claims that the expulsion of the complainant would not lead to a violation of article 3 of the Convention owing to this situation. Regarding the contention that there should have been a medical examination by the Migration Board or the Migration Court, the State party submits that it is up to the complainant to establish a prima facie case. The complainant himself expressly stated that, apart from a scar on his eyebrow, there were no visible scars or other injuries on his body from the torture that he allegedly suffered.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that in the present case the State party has recognized that the complainant has exhausted all available domestic remedies. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22 (4) of the Convention.

8.2 The Committee must determine whether the deportation of the complainant to the Russian Federation would violate the State party's obligations under article 3 (1) of the Convention not to expel or return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee recalls that the existence in a country of gross, flagrant or mass violations of human rights is not in itself a sufficient ground for believing that an individual would be subjected to torture.[13] Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that an individual might not be subjected to torture.

8.3 Recalling its general comment No. 1 (1997), the Committee reaffirms that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable, but it must be personal, present, foreseeable and real.[14]

[13] See communication No. 428/2010, *Kalinichenko v. Morocco*, decision adopted on 25 November 2011, para. 15.3.

[14] See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November

8.4 The Committee notes the claim that the complainant and his brother were arbitrarily arrested and tortured, and that his brother was sentenced to a prison term following an unfair trial. The Committee also notes that, according to the complainant, the Migration Board and, subsequently, the Migration Court, both failed to take this information into consideration.

8.5 The Committee further notes that, even if it were to accept the claim that the complainant was subjected to torture in the past, the question is whether he remains, at present, at risk of torture in the Russian Federation. The Committee notes that, at present, the human rights situation in the Russian Federation remains a matter of concern in several aspects, in particular in the northern Caucasus. The Committee recalls that, in its concluding observations concerning the fifth periodic report of the Russian Federation in 2012, it expressed its concern at numerous, ongoing and consistent reports of serious human rights abuses inflicted by or at the instigation or with the consent or acquiescence of public officials or other persons acting in official capacities in the northern Caucasus, including Chechnya, including torture and ill-treatment, abductions, enforced disappearances and extrajudicial killings (see CAT/C/RUS/CO/5, para. 13).

8.6 The Committee notes that the State party has drawn attention to inconsistencies and contradictions in the complainant's accounts and submissions before both the domestic asylum authorities and the Committee, which cast doubts regarding his general credibility and the veracity of his claims. In particular, the complainant provided a copy of his passport with his address registered in the village of Sernovodsk, Chechnya, but his driver's licence was registered to his address in Nazran, Ingushetia. As a result, doubts persist about his real place of residence. The Committee also notes the sparseness of the information on the complainant's brother, including his name, description or any identifying information, who, it is alleged, actively participated in rebel groups and was arrested and tortured because of this. The complainant provides little factual information about the specific charges against his brother, no details regarding the alleged mistreatment his brother suffered at the hands of the law enforcement agencies and no information on his current whereabouts. Nor does the complainant provide comprehensive information regarding the fact that his brother was released after only six months of imprisonment, considering that the Russian criminal law foresees much longer penalties for such activity. Similarly, the Committee notes that the complainant provided very cursory information regarding the allegation that his parents' house was burned down.

8.7 The Committee observes that the complainant merely stated before the Migration Board and the Migration Court that he feared being subjected to torture if returned to the Russian Federation, claiming that he had been tortured in the past and that he would be targeted again. The complainant, however, failed to provide any details about the torture or ill-treatment he had allegedly suffered on a number of occasions at the hands of the law enforcement agencies (see para. 2.2), such as details regarding the identity or the number of perpetrators, or the exact methods of ill-treatment or torture. The Committee notes the absence of any medical records, documents or affidavits from witnesses that could support the complainant's claims. The Committee also notes that no medical or forensic examination has been sought, by either side, regarding the complainant's undetailed torture allegations. The Committee notes, however, that it transpires from the material on file that, irrespective of the non-specific nature of the author's claims in the present case, the State party's asylum authorities have thoroughly evaluated all the evidence presented by the complainant in support of his application, but found it to lack credibility in general.

2003; and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

8.8 The Committee recalls its jurisprudence according to which the risk of torture must be assessed on grounds that go beyond mere theory, and indicates that it is generally for the complainant to present an arguable case.[15] In the light of the considerations above, and on the basis of all the information submitted by the complainant, including on the general human rights situation in the Russian Federation, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his expulsion to his country of origin would expose him to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, therefore concludes that the complainant's expulsion to the Russian Federation would not constitute a breach of article 3 of the Convention.

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[15] See communications No. 298/2006, *C.A.R.M. et al. v. Canada*, decision adopted on 18 May 2007, para. 8.10; No. 256/2004, *M.Z. v. Sweden*, decision adopted on 12 May 2006, para. 9.5; No. 214/2002, *M.A.K. v. Germany*, decision adopted on 12 May 2004, para. 13.5; No. 150/1999, *S.L. v. Sweden*, decision adopted on 11 May 2001, para. 7; and No. 347/2008, *N.B.-M. v. Switzerland*, decision adopted on 14 November 2011, para. 9.9.